

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2033 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

B'NAGAR MUNICIPAL CORPORATION

Versus

MANJULABEN N PARMAR

Appearance:

MR JR NANAVATI for Petitioner

MR YV SHAH for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/09/97

ORAL JUDGMENT

#. The petitioner, Bhavnagar Municipal Corporation, filed this Special Civil Application and challenge has been made to the award of the Labour Court, Bhavnagar, in Reference (LCB) No.220 of 1987 dated Nil, January 1991. A copy of the award has been filed on record but the date of the same has not been mentioned therein.

#. The Labour Court, under the aforesaid award, order for reinstatement of respondent-workmen with full backwages. Challenge has been made to the award impugned by learned counsel for the petitioner on the ground that the respondents are teachers in Bal Mandirs and as such they are not 'workmen'. It has next been contended that the petitioner was running Bal Mandirs under the aid of the Government and the Government had not given aid and consequent thereupon the Bal Mandirs were closed. When the Bal Mandirs were closed, the consequential order would have been only to retrench the respondents and accordingly they have been retrenched. It has further been contended that the respondents filed Civil Suit No.414 of 1980 in the Court of Civil Judge (S.D.), Bhavnagar, for declaration but later on the same has been withdrawn and as such, the respondents could not have approached the Labour Court in the matter. It is a case of closure of establishment/ project in which the respondents have been appointed and on closure of the same for want of funds, their services are to be terminated and in that case even if the provisions of Section 25-F of the Industrial Disputes Act, 1947, are to be complied with, still the award of reinstatement which has been made is illegal. The Labour Court could not have compelled the petitioner to continue the Bal Mandirs, and the result of the award impugned is that though the petitioner is not getting any financial aid from the Government, still it has to run the Bal Mandirs.

#. On the other hand, the learned counsel for the respondents admitted that the Bal Mandirs were run by the petitioner from the financial aid of Government and the Bal Mandirs were closed as the aid was not given by the Government to the petitioner. He further admits that the respondents have to their credit, hardly one year's service on the date on which they were retrenched from services. However, the learned counsel for the respondents contended that the provisions of Section 25-F of the Industrial Disputes Act, 1947, have been contravened and as such, the only order would have been of reinstatement of the respondents. It has further been contended that the respondents are not teachers and the finding given by the Labour Court in this respect does not call for interference. Next contention has been made that even if the Bal Mandirs were closed, the respondents should have been absorbed by the petitioner on some other posts. Lastly, the learned counsel for the respondents contended that even if it is taken that the Bal Mandirs were closed as the State Government stopped to give grant-in-aid, then too, the closure of Bal Mandirs was illegal.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The State Government is not a party to this petition. The Bal Mandirs in which the respondents were engaged were run by the petitioner with the financial aid of the State Government. The 100% financial aid, on which there is no dispute between the parties, was given by the State Government. The closure of the Bal Mandirs was due to the stoppage of grant-in-aid by the Government to the petitioner. The respondents admit that they have to their credit only about one year's service on the date on which the Bal Mandirs were closed. It is also not in dispute that the respondents have been appointed in the Bal Mandirs. The learned counsel for the respondents further admits that the respondents were appointed on 21st August 1979 and the Bal Mandirs were closed on 8th August 1980. The learned counsel for the respondents further admits that the respondents were given appointments in the pay scale of Rs.135-225. It is necessary to note here that the lowest pay scale in the Government service is Rs.750-925 for class IV employees. The respondents were given the pay scale of Rs.135-225 and as stated by learned counsel for the petitioner, this pay scale has been prescribed for the reason that the job of Bal Mandirs was only a part time job as the respondents were required to work for a short period of about three to four hours.

#. The closure of Bal Mandirs was for the reason that the State Government had stopped to grant the financial aid to the petitioner. The petitioner, in that eventuality, had no option except to close the Bal Mandirs. It could not have undertaken that financial burden. For want of grant-in-aid, the closure of Bal Mandirs by the petitioner cannot be said to be illegal or arbitrary. The grievance of the respondents was against the petitioner and though the action of the petitioner was there to close the Bal Mandirs, but in fact, the Bal Mandirs were closed down due to stoppage of grant-in-aid by the State Government. When the Bal Mandirs have been closed for the reasons aforesaid, I fail to see any justification, much less a legality in the in the award impugned in the Special Civil Application to give direction for reinstatement of respondents who were admittedly appointed and worked in the project "Bal Mandir". When this project has been closed, the consequence of closure of that is of termination/retrenchment of the employees working therein and neither this Court or the Labour Court could have

compelled the petitioner to continue the Bal Mandirs. It is significant to mention here that the action of the State Government to stop the grant-in-aid to the petitioner for Bal Mandirs was not in question before the Labour Court nor before this Court. From the award, I find that the reference was only with reference to termination of services of the respondent and not with respect to closure of Bal Mandirs. I find sufficient justification in the contention of the learned counsel for the petitioner that even if it is taken to be a case of termination of services of respondents in violation of section 25-F of the Industrial Disputes Act, still the award of reinstatement could not have been passed. At the most, the award could have been passed of compensation in lieu of reinstatement. Regarding the contention of learned counsel for the respondents that in the case of closure of Bal Mandirs, the respondents should have been absorbed on other posts by the petitioner, I fail to see any substance in this contention. The learned counsel for the petitioner has failed to show any provision from the Act or Rules or Resolutions of the Corporation which makes such a provision. Otherwise also, in case such contention is accepted, then the persons who have been appointed only in the pay scale of Rs.135-225 will get appointment in the higher pay scales. The project in which the respondents have been appointed, has been closed and as such their services are to be terminated. They could not have been taken on the other posts more so when those posts are of higher status and pay scales. The posts are to be filled in accordance with the Rules and Regulations prescribed for recruitment and appointments which have been made in a project for working in a lower pay scale cannot become a conduit pipe for recruitment to the regular posts. It was a temporary project which was running at the financial aid of the State Government and in case it has been closed on stoppage of financial aid, the only order would have been is the termination or retrenchment of their services. There is yet another aspect of the matter which has to be taken not of. The respondents hardly had one year service to their credit on the day on which the Bal Mandirs were closed and for employment of such duration, the petitioner could not have been compelled to take them on other posts. Otherwise also, that was not the subject matter in dispute before the Labour Court.

#. However, I do not consider it to be appropriate to go on the issue whether the respondents are workmen or not. Even if it is taken to be a case that the respondents are not workmen, then too, they will not be rendered

remediless and the petitioner being a 'State' within the meaning of Article 12 of the Constitution, this Court should have gone on the question of validity of its action of their retrenchment. So the award to the extent where retrenchment of respondents was found to be in violation of provisions of Section 25-F of the Industrial Disputes Act, 1947, is concerned, it does not call for any interference, but the reinstatement which has been ordered is wholly unjustified when the project has been closed. The consequence of the order of reinstatement was further direction to the petitioner to continue the project of Bal Mandirs which has been closed down for want of funds from the Government. In such case, the only relief could have been to award compensation in lieu of reinstatement. Next question which falls for consideration of this Court is what amount should be paid to the respondents by way of compensation in lieu of reinstatement. The learned counsel for respondents submitted that this Court has ordered in the case of many of the respondents to give them benefit of Section 17-B of the Industrial Disputes Act, 1947. So the substantial number of respondents are getting for all these years, the amount of pay last drawn by them, though without working. Whatever amount which they have received so far and the amount which they will receive upto 1st October 1997 is taken to be the amount of compensation in lieu of their reinstatement. The other respondents who are not getting the benefit of Section 17-B will get the amount of compensation calculated on the basis of last pay drawn from the date of award impugned till 1st October 1997. The amount to be paid to respondents who were not getting the benefit of Section 17-B of the aforesaid Act, is to be calculated by petitioner within a period of three months from the date of receipt of this order and payment thereof shall be made to them within one month next.

#. In the result, this Special Civil Application is partly allowed. The award of the Labour Court to the extent where it declares that the termination of services of respondents is illegal, is maintained, but the award where it directs for reinstatement with further benefits is quashed and set aside. In lieu of reinstatement, the respondents shall be entitled for the amount of compensation as aforesaid. It is made clear that none of the respondents shall be entitled for any amount after 1st October 1997. The Special Civil Application and Rule disposed of in aforesaid terms with no order as to costs.

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(sunil)